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ALEXANDER L. STEVAS

No. 81-2304

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES STEEL CORPORATION, PETITIONER

v.

KATHRYN J. GAUDIANO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the rebuttable presumption contained in 30 U.S.C. (Supp. IV) 921(c)(5), which makes black lung disability benefits available to the eligible survivors of miners who died on or before March 1, 1978, having been employed for 25 years or more in one or more coal mines prior to June 30, 1971, is irrational and therefore violative of due process.

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OPINIONS BELOW

The court of appeals denied petitioner's petition for review without opinion (Pet. App. 1a). The decision and order of the Benefits Review Board (Pet. App. 2a-14a) is reported at 3 B.L.R. 1-643. The administrative law judge's decision (Pet. App. 15a-19a) is not reported.

JURISDICTION

The judgment order of the court of appeals was entered on March 29, 1982. The petition for a writ of certiorari was filed on June 15, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Respondent Kathryn Gaudiano is the widow of Arthur Gaudiano, who was employed as an underground coal miner for approximately 30 years, until his death as a result

of a mine accident on December 9, 1974 (Pet. App. 4a). It is undisputed that at the time of his death, Arthur Gaudiano suffered from simple pneumoconiosis (black lung disease) (*id.* at 7a & n.4).[1]

Section 411(c)(5) of the Black Lung Benefits Act, 30 U.S.C. (Supp. IV) 921(c)(5), which was added by Section 3 of the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 96 (the Reform Act), provides that the eligible survivors of a miner who died before March 1, 1978 (the effective date of the Reform Act) and who had been employed for 25 years or more in one or more mines prior to June 30, 1971 (the effective date of the imposition of federal dust control standards in the mines),[2] are entitled to benefits, unless it is established that the miner was neither totally nor partially disabled by pneumoconiosis at the time of death. Invoking the rebuttable presumption contained in Section 411(c)(5), an administrative law judge granted Mrs. Gaudiano's application for black lung benefits (Pet. App. 15a-19a). On appeal, the Benefits Review Board affirmed, rejecting petitioner's argument that Section 411(c)(5) is irrational and therefore violative of the Fifth Amendment's Due Process Clause (Pet. App. 5a).

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[1]Black lung disease is a severe, and frequently crippling, chronic respiratory impairment, which is caused by long-term inhalation of coal dust. Removing the miner from the source of the coal dust is the only known means of preventing the contraction of black lung disease, and, once contracted, the disease is irreversible. See *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 6-7 (1976).

[2]Effective June 30, 1971, all coal mine operators were required by Title II of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 841 *et seq.*, to maintain the average concentration of respirable dust in the mine atmosphere at or below 3.0 milligrams of dust per cubic meter of air, a level of dust not believed to be unusually dangerous to the health of coal miners. 30 U.S.C. 842(b)(1).

The court of appeals denied a petition for review of the Benefits Review Board's order without opinion (Pet. App. 1a).

ARGUMENT

The decision below creates no conflict with any decision of this Court or a court of appeals. Moreover, because Section 411(c)(5) is inapplicable to claims filed after June 30, 1982 (Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, Title II, Section 202(b)(2), 95 Stat. 1643), the class of claims subject to the presumption challenged by petitioner is now closed.[3] Hence, further review by this Court is not warranted.

In any event, petitioner's contention that there is no rational basis for the "survivors' presumption" contained in Section 411(c)(5) is without substance.[4] In *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976), this Court rejected a similar challenge to the constitutionality of the other presumptions contained in Section 411(c)(1)-(c)(4), 30 U.S.C. 921(c)(1)-(c)(4), which had been enacted prior to the

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[3]Section 411(c)(5) was eliminated because it had been "enacted to deal with claims involving periods of time when medical diagnosis were [*sic*] inadequate or not widely available, and poor medical and death records kept" (see page 6, *infra*), and this is no longer the case, and because few claims by survivors of miners who died before March 1, 1978, were expected to be filed in the future. 127 Cong. Rec. S14766 (daily ed. Dec. 8, 1981) (section-by-section analysis).

[4]Although petitioner also lists as a question presented (Pet. i) "[w]hether the court of appeals erroneously affirmed the Benefits Review Board's decision that the Petitioner had failed to rebut the presumption of Section 411(c)(5) * * *," it does not present any grounds for review of that question in the body of the petition. In any event, that issue is purely a factual one, which does not warrant consideration by this Court. Furthermore, as the Board's opinion makes clear (Pet. App. 6a-7a), there was substantial evidence to support the ALJ's finding on this issue.

1977 Reform Act.[5] In that case, the Court held that in order for a presumption involving such an economic regulation to be valid under the Due Process Clause, " 'it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.' " 428 U.S. at 28, quoting *Mobile, J. & K.C. R.R.* v. *Turnipseed*, 219 U.S. 35, 43 (1910).

The presumption contained in Section 411(c)(5), 30 U.S.C. (Supp. IV) 921(c)(5), plainly passes constitutional muster under this standard. The legislative history of the 1977 Reform Act is replete with direct evidence, including medical and other testimony, as well as evidence of administrative experience under the then existing black lung program, supporting a connection between a miner's years of service in the coal mines before they were subject to federal dust control regulation and the likelihood of the miner's developing a disability due to pneumoconiosis. See, *e.g.*,

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[5]Section 411(c)(1), 30 U.S.C. 921(c)(1), provides that if a miner who suffers from pneumoconiosis was employed for 10 or more years in one or more coal mines, it shall be rebuttably presumed that the miner's pneumoconiosis arose out of his employment. Section 411(c)(2), 30 U.S.C. 921(c)(2), provides that if a miner was employed for 10 or more years in one or more coal mines and died from a respirable disease, it shall be rebuttably presumed that his death was due to pneumoconiosis. Under Section 411(c)(3), 30 U.S.C. 921(c)(3), a miner who is clinically shown to have or to have had the particularly severe, "complicated" form of pneumoconiosis is irrebuttably presumed to be totally disabled as a result of pneumoconiosis or to have died as a result of or while disabled by pneumoconiosis, as the case may be. Section 411(c)(4), 30 U.S.C. 921(c)(4), provides that, in the case of a miner who has worked 15 or more years in one or more underground coal mines and whose chest x-ray is interpreted as negative for complicated pneumoconiosis, if other evidence demonstrates the existence of a totally disabling respiratory impairment, it shall be rebuttably presumed that the miner is totally disabled as a result of pneumoconiosis. See *Usery* v. *Turner Elkhorn Mining Co., supra*, 428 U.S. at 20-31.

Black Lung Benefits Provisions of the Federal Coal Mine Health and Safety Act: Hearings Before the House Comm. on Education and Labor, 95th Cong., 1st Sess. 292 (1977); *Black Lung Benefits Reform Act of 1975: Hearings on H.R. 7, H.R. 8, and H.R. 3333 Before the Subcomm. on Labor Standards of the House Comm. on Education and Labor*, 94th Cong., 1st Sess. 115, 117 (1975) (statement of Daniel Fine, M.D.), quoted in H.R. Rep. No. 95-151, 95th Cong., 1st Sess. 6 (1977).[6] See also *Usery* v. *Turner Elkhorn Mining Co., supra*, 428 U.S. at 28-29. In a medically controversial area such as this one,[7] which is neither " 'within specialized judicial competence [n]or completely commonplace,' " Congress is permitted to assess the evidence and draw its own conclusions. *Id.* at 33, quoting *United States* v. *Gainey*, 380 U.S. 63, 67 (1965).

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[6]The House and Senate committees noted that under the existing black lung program, 80.89% of the miners with 30 or more years of coal mine employment submitting claims had been administratively determined to be *totally* disabled. H.R. Rep. No. 95-151, *supra*, at 5; S. Rep. No. 95-209, 95th Cong., 1st Sess. 17 (1977). In addition, the United Mine Workers reported that its experience indicated that a majority of mine workers with more than 25 years' employment suffered "substantial health impairment due to lung disease." *Black Lung Benefits Reform Act, 1976: Hearings on H.R. 10760 and S. 3183 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 94th Cong., 2d Sess. 143 (1976). Furthermore, autopsies performed by a laboratory of the National Institute of Occupational Safety and Health as part of an ongoing study indicated that over 90% of miners with more than 25 years of coal mine employment had black lung disease to some degree. *Ibid.*

[7]Congress also heard medical evidence disputing the connection between years of coal dust exposure and the onset of disability due to black lung disease. See H.R. Rep. No. 95-151, *supra*, at 81-82 (minority views).

Petitioner attempts (Pet. 5-7) to distinguish the presumption contained in Section 411(c)(5) from those that the Court upheld in *Usery* v. *Turner Elkhorn Mining Co., supra*, on the ground that no medical evidence is required to invoke the former. However, the challenged presumption is, of course, only a rebuttable one; the opposing party is entitled to introduce evidence showing that the miner was not disabled due to black lung disease. This allocation of the burden of proof is tailored to the particular evidentiary problem Congress sought to address in enacting Section 411(c)(5), and, viewed in that context, is clearly rational.

Congress was concerned with the difficulties miners' survivors have encountered in attempting to compile medical evidence in support of their claims as a result of the loss or destruction of medical records and the scantness of medical knowledge concerning coal workers' pneumoconiosis in the past. S. Rep. No. 95-209, 95th Cong., 1st Sess. 17-18 (1977).[8] Indeed, Congress was aware that even at the time of the enactment of the Reform Act in 1977 it remained difficult to make accurate determinations of impairment on an individual basis, since "the state of the medical art [was] not sufficiently advanced to unequivocally identify occupationally related disability in coal miners." S. Rep. No. 95-209, *supra*, at 17. Congress thus concluded that, under the law then in effect, the claims of many truly disabled miners were being rejected. *Ibid.*; H.R. Rep. No. 95-151, *supra*, at 5.

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[8] See *Black Lung Benefits Provisions of the Federal Coal Mine Health and Safety Act: Hearings Before the House Comm. on Education and Labor*, 95th Cong., 1st Sess. 316-318 (1977) (statement of Anise Floyd, President, West Virginia Miners Wives and Widows Association).

Although coal workers' pneumoconiosis was recognized as a separate clinical disease entity in Great Britain in 1934, it was not so recognized in the United States until the 1950's. During the 1960's a Public Health Service study described the illness as "an occupational respiratory disease of serious and previously unrecognized magnitude." S. Rep. No. 91-411, 91st Cong., 1st Sess. 8 (1969).

By establishing a rebuttable presumption of entitlement available to only a limited class of persons, Congress struck precisely the sort of " 'rough accommodation[]' " (*Usery* v. *Turner Elkhorn Mining Co., supra*, 428 U.S. at 29, quoting *Metropolis Theatre Co.* v. *Chicago*, 228 U.S. 61, 69 (1913)) that it is entitled to make in an area of economic regulation. "That Congress ultimately determined 'to resolve doubts in favor of the disabled miner' does not render the enactment arbitrary under the standard of rationality appropriate to this legislation." 428 U.S. at 34, quoting S. Rep. No. 92-743, 92d Cong., 2d Sess. 11 (1972).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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